

# FINAL BILL REPORT

## E2SHB 1812

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### PARTIAL VETO C 183 L 22 Synopsis as Enacted

**Brief Description:** Modernizing the energy facility site evaluation council to meet the state's clean energy goals.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Wylie, Berry, Valdez, Pollet and Harris-Talley; by request of Office of the Governor).

**House Committee on Environment & Energy**  
**House Committee on Appropriations**  
**Senate Committee on Environment, Energy & Technology**  
**Senate Committee on Ways & Means**

#### **Background:**

##### Intent for Energy Facility Site Locations.

The policy of Washington regarding energy facility site locations includes references to:

- recognizing a need for additional energy facilities in Washington;
- ensuring that the location and operation of these facilities will produce minimal adverse effects on the environment; and
- acting to balance increasing demands for energy facilities with the broad interests of the public.

##### The Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (EFSEC) was established in 1970 to provide a single siting process for major energy facilities located in the state. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities, as well as specifies the conditions of construction and operation. After evaluating an application, the EFSEC submits a recommendation either approving or rejecting an application to the Governor, who makes the final decision on site certification. This recommendation must be reported to the Governor within 12 months of application receipt, or at a later time if agreed to by the

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

applicant and EFSEC. The recommendation must include a draft certification agreement, which must include various conditions including conditions to protect state, local, and community interests affected by the construction or operation of the energy facility. If approved by the Governor, a site certification agreement is issued in lieu of any other individual state or local agency permits.

The Utilities and Transportation Commission (UTC) provides all administrative and staff support for the EFSEC. The UTC has supervisory authority over the staff of the EFSEC. The EFSEC otherwise retains its independence in exercising its powers, functions, and duties and its supervisory control over non-administrative staff support.

The Governor, with the advice and consent of the Senate, appoints the EFSEC Chair (Chair). The Chair or the Chair's designee executes all official documents, contracts, and other materials on behalf of the EFSEC. Along with the Chair, the permanent membership of the EFSEC consists of representatives from five state agencies: the departments of Commerce, Ecology, Fish and Wildlife, and Natural Resources, and the Utilities and Transportation Commission. Four other departments—Agriculture, Health, Transportation, and Military—may each choose to participate in the EFSEC for a particular project. Cities, counties, and port districts must also appoint members to the EFSEC to review proposed facilities located in their jurisdictions.

Among the EFSEC's enumerated powers are the authorities to:

- develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities;
- conduct or contract studies of sites proposed for certification;
- conduct public hearings on the proposed location of energy facilities;
- issue required permits, including permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act; and
- preempt local regulation and certification of the location, construction, and operational conditions of certification of energy facilities.

#### The State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead governmental agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact (threshold determination), the proposal must undergo a more comprehensive environmental analysis in the form of an Environmental Impact Statement (EIS). The lead agency is responsible for complying with SEPA's procedural requirements,

including making a threshold determination and preparing the EIS when one is required.

Under SEPA rules adopted by the Department of Ecology (Ecology), the EFSEC is the lead agency for all government actions for energy facilities that require certification under EFSEC's siting laws and the EFSEC manager is responsible for coordinating activities to comply with the SEPA.

Energy Facilities Covered Under Energy Facility Site Evaluation Council Siting Laws.

The laws that provide for a facility to seek certification through the EFSEC process apply to the construction, reconstruction, and enlargement of energy facilities, biorefineries, and electrical transmission facilities, with many specifications. For example, the EFSEC has siting authority over energy facilities including nuclear power plants of any size, thermal electric power plants with a generating capacity of 350 megawatts or greater, and other facilities that meet specified capacity thresholds to receive, store, process, or produce various energy types. Energy facilities of any size that exclusively use alternative energy resources such as wind or solar energy may opt into the EFSEC review and certification process. The EFSEC's jurisdiction does not extend to hydropower facilities or facilities operated by and for the armed services or by other federal authority for national defense.

Electrical transmission facilities are covered under the EFSEC siting process if:

- the facility is located in a national interest electric transmission corridor; or
- an applicant chooses to receive certification, and
  - the facilities are of a nominal voltage in excess of 115,000 volts and are located in a completely new corridor, except for the terminus of the new facility or interconnection of the new facility with the existing grid, and the corridor is not otherwise used for electrical transmission facilities, and the facilities are located in more than one jurisdiction that has promulgated land use plans or zoning ordinances; or
  - the facilities are of a nominal voltage in excess of 115,000 volts, and the facilities are located outside an electrical transmission corridor identified in either of the bullet points directly above.

Study of Potential Sites.

Upon the request of a potential applicant, the EFSEC may conduct a preliminary study of any potential site prior to receiving an application for site certification. After the EFSEC receives a request to study a potential site, it must commission an independent consultant to conduct the study, which must include an analysis of environmental impact information. The applicant must pay a fee of \$10,000 toward the cost of the study. If the study costs more, the applicant must give approval prior to paying more than \$10,000, and if the study costs less, unexpended funds are returned to the applicant. The EFSEC may cooperate with local government entities where the potential site is located, as well as federal and state agencies, and interested municipal and public corporations.

This preliminary EFSEC study may be used in place of the EIS that is required by other

branches of government under SEPA.

#### Public Hearings.

In reviewing an application for site certification, the EFSEC must hold three sequential public hearings:

- an informational hearing;
- a land use and zoning ordinance hearing. If it is determined that the proposed site isn't in conformance with local planning ordinances, the local jurisdiction may not then change the land use plans or zoning ordinances to affect the proposed site; and
- a public hearing conducted as an adjudicative proceeding prior to the issuance of a certification recommendation to the Governor. Anyone may speak at this meeting.

#### Expedited Processing of Applications.

A person may apply to the EFSEC for expedited processing of their application for certification of an energy facility or alternative energy resource facility. The EFSEC may grant expedited processing if it finds that: (1) the environmental impact of the proposed facility is not significant or will be mitigated to a nonsignificant level under SEPA review; and (2) the project is in compliance with local land use plans or zoning ordinances.

If an application for a project's certification is granted expedited processing, the EFSEC is not required to: (1) commission an independent study to further measure the consequences of the proposed facility on the environment; or (2) hold an adjudicative proceeding on the application.

#### Payments to the Utilities and Transportation Commission on Behalf of the Energy Facility Site Evaluation Council.

On behalf of the EFSEC, the UTC must receive deposits and reimbursements from preapplicants, applicants, and certificate holders:

- for preapplicants, a deposit of \$10,000, to be applied to the cost of the preapplication process;
- for applicants, a deposit up to \$50,000, or a greater amount specified by the EFSEC after consulting with the applicant. Payment is for the EFSEC's costs of reviewing the application and for an independent evaluation of the site if the EFSEC deems that to be necessary; and
- for certificate holders, a deposit up to \$50,000, or a greater amount specified by the EFSEC after consulting with the certificate holder. Payment is for the EFSEC's costs of inspection and monitoring compliance.

The receipts from all applicants must be credited to the State General Fund and only spent by the EFSEC for authorized purposes.

#### Clean Fuels Program.

Ecology is directed to adopt a rule establishing a Clean Fuels Program (CFP) limiting the greenhouse gas (GHG) emissions attributable to each unit of transportation fuel (carbon

intensity) to 20 percent below 2017 levels by 2038. The rule adopted by Ecology to implement the CFP must include standards for assigning levels of GHG emissions attributable to transportation fuels based on a lifecycle analysis that considers emissions from the production, storage, transportation, and combustion of the fuels, and associated changes in land use. Ecology must establish separate carbon intensity standards for gasoline and its substitutes and diesel and its substitute.

Joint Committee on Energy Supply and Energy Conservation.

The Joint Committee on Energy Supply and Energy Conservation (Joint Committee) reviews plans proposed by the Governor for programs, controls, standards, and priorities for the production, allocation, and consumption of energy during any current or anticipated condition of energy supply alert or energy emergency, and makes recommendations back to the Governor for review. The Joint Committee either approves or disapproves any request from the Governor regarding a declaration of a condition of energy emergency. The Joint Committee also receives information related to the state or regional energy supply situation. The Joint Committee meets at the following times: at least once per year or at anytime upon the call of the Joint Committee's Chair to receive information related to the state or regional energy supply situation; during a condition of energy supply alert or emergency; and upon the call of the Joint Committee's Chair, in response to gubernatorial action to terminate such a condition.

**Summary:**

Intent for Energy Facility Site Locations.

The policy of Washington regarding energy facility site locations adds references to:

- reducing dependence on fossil fuels and conducting a transparent and inclusive public process with particular attention to overburdened communities;
- streamlining application review of energy facilities to meet Washington's energy goals;
- authorizing certain clean energy product manufacturing facilities to be considered; and
- encouraging meaningful public comment and participation decisions.

The Energy Facility Site Evaluation Council.

The Energy Facility Site Evaluation Council (EFSEC) is established as a stand-alone entity of state government, and is no longer housed within the Utilities and Transportation Commission (UTC). The transfer of EFSEC-related authority from the UTC to the new EFSEC agency includes all administrative powers, duties, and functions of the UTC that are performed for the EFSEC, and employees that carry out these responsibilities, along with all related materials and property. All financial assets held by the UTC and appropriations made to the UTC for the benefit of the EFSEC must be transferred to a new EFSEC account created to carry out the EFSEC siting laws. All pending business and existing contracts and obligations must continue to be performed by the EFSEC.

The EFSEC Chair (Chair) must appoint a director to oversee operations and carry out responsibilities for energy facility siting. The director must employ administrative staff. The director, personal secretary to the director, council chair, and not more than two professional staff are exempted from the Civil Service Law. The Chair may delegate its council appointing authority to the director.

For the EFSEC's 12-month reporting requirement to the Governor to apply, an application must be deemed complete by the director.

The EFSEC's draft certification agreement that is submitted to the Governor with a recommendation of approval must also include conditions to protect overburdened communities affected by the construction or operation of the facility.

A quorum of the EFSEC consists of a majority of members appointed for business to be conducted.

The EFSEC's authorities are amended to clarify that the EFSEC may:

- develop and apply guidelines for ongoing regulatory oversight;
- enter into contracts, not limited to study contracts, to carry out its responsibilities; and
- conduct hearings not only on the proposed location of the energy facilities but also on the operational conditions.

Energy Facilities Covered Under Energy Facility Site Evaluation Council Siting Laws.  
*Clean Energy Product Manufacturing Facilities.*

A person proposing to construct, reconstruct, or enlarge a clean energy product manufacturing facility may choose to receive certification under the EFSEC's energy facility siting laws. The authorities that apply to energy facilities apply to clean energy product manufacturing facilities.

Clean energy product manufacturing facilities exclusively or primarily manufacture the following products or components primarily used by such products:

- vehicles, vessels, and other modes of transportation that emit no exhaust gas from the onboard source of power, other than water vapor;
- charging and fueling infrastructure for electric, hydrogen, or other types of vehicles that emit no exhaust gas from the onboard source of power, other than water vapor;
- renewable or green electrolytic hydrogen, including preparing renewable or green electrolytic hydrogen for distribution as an energy carrier or manufacturing feedstock, or converting it to a green hydrogen carrier;
- equipment and products used to produce energy from alternative energy resources; and
- equipment and products used at storage facilities.

*Other Facilities That May Opt In.*

In addition to clean energy product manufacturing facilities, storage facilities, all types of

renewable natural gas facilities, and renewable and green electrolytic hydrogen energy facilities may also opt into the EFSEC's processes:

- Storage facilities are plants that: (1) accept electricity as an energy source and use a chemical, thermal, mechanical or other process to store energy for subsequent delivery or consumption in the form of electricity; or (2) store renewable hydrogen, green electrolytic hydrogen, or a green hydrogen carrier for subsequent delivery or consumption.
- Renewable natural gas is a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.
- Renewable hydrogen is hydrogen produced using renewable resources both as the source for the hydrogen and the source for the energy input into the production process.
- Green electrolytic hydrogen is hydrogen produced through electrolysis. It does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.
- Green hydrogen carrier is a chemical compound, created using electricity or renewable resources as energy input and without use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

Additionally, all refined biofuel facilities that produce less than 25,000 barrels a day may now opt-into the EFSEC's processes, not just those that produce between 1,500 and 25,000 barrels a day.

#### *Electrical Transmission Facilities.*

For an electrical transmission facility that an applicant is choosing to receive certification for, previous requirements are removed so that the only requirements are that this facility must be: (1) of a nominal voltage or at least 115,000 volts; and (2) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances.

The preapplicant fee of \$10,000 now only applies to electrical transmission facilities.

#### Study of Potential Projects.

The EFSEC may conduct a preliminary study of a potential project if an applicant and the EFSEC agree that the EFSEC do so, rather than only if the applicant requests the study. The EFSEC is no longer required to, but still may, commission an independent consultant to study the potential project. This preliminary study is before any State Environmental Policy Act (SEPA) environmental review process begins, and is not required to include an analysis of environmental impact information. Tribal entities are added to the entities that the EFSEC may cooperate and work with while conducting the preliminary study. If an applicant submits a formal application for the proposed site that was studied, the applicant's payments for the preliminary study may be considered as payment toward the application fee. The preliminary EFSEC study may no longer be used in place of the Environmental

Impact Statement required under SEPA.

Except for the siting of electrical transmission facilities, applicants may request a preapplication review of a proposed project, and the EFSEC staff must provide comments on any additional studies and stakeholder and tribal input that should be included in the application. After this initial review, the EFSEC staff may conduct or contract a further review and consultation if the applicant pays fees that are agreed upon by the director and the applicant.

Engagement with Local Legislative Authorities and Federally Recognized Tribes.

When an application is received, the Chair must notify: (1) the city and county legislative authorities where the proposed facility is located; (2) the federally recognized tribal governments affected by the proposed facility; and (3) the Department of Archaeology and Historic Preservation. The Department of Archaeology and Historic Preservation must coordinate with affected federally recognized tribes and with the applicant. The EFSEC must work with local governments where a project is proposed to be sited, and with all federally recognized tribes affected by a proposed facility, to provide for participation and input during siting review and compliance monitoring.

Energy Facility Site Evaluation Council staff must inform affected federally recognized tribes of a project undergoing preapplication review. The Chair and staff must offer to conduct government-to-government consultation to address issues of concern raised by any tribe. The Chair must provide regular updates on the consultation to the EFSEC during the application review process. A summary of the government-to-government consultation process, including issues and proposed resolutions, must be included in the EFSEC reports to the Governor that recommend approving or rejecting an application for certification. This summary must comply with the Public Records Act to exempt records, maps, and other information related to archaeological and certain tribal sites from public reporting.

Public Hearings and Public Comments.

Local jurisdictions are no longer prohibited from changing their plans or ordinances after the land use and zoning ordinance hearing if the proposed site did not conform. Instead, the EFSEC must determine whether the proposal is consistent with local land use and zoning ordinances on the date of the application.

There must be a public comment period prior to the start of the final public hearing that is conducted as an adjudicative proceeding. During the final public hearing, anyone may raise one or more specific issues but only as long as they raised the issue or issues in writing with specificity during the application review process or during the public comment period prior to the start of this hearing.

Additionally, the EFSEC may limit the adjudicative proceeding to whether any local land use plans or zoning ordinances that are inconsistent with the proposed site, as determined in the previous hearing, should be preempted. The EFSEC may only limit the final public

hearing in this way if the SEPA review determines that the environmental impact of the proposed facility is not significant or will be mitigated to a nonsignificant level.

The EFSEC must review and consider comments received during the application process in making its recommendation to the Governor.

The director of the EFSEC must provide an opportunity for public comment on a SEPA determination of nonsignificance or mitigated nonsignificance at the end of a process where a project applicant withdraws and revises an application to avoid a determination of significance on the originally submitted application.

#### Expedited Processing of Applications.

An applicant may apply for expedited processing for any facility covered under the EFSEC's siting laws, not only energy facilities and alternative energy resource facilities. After expedited processing is granted and before providing a recommendation to the Governor, the EFSEC must hold a public meeting to take comments on the proposed application.

#### Payments to the Energy Facility Site Evaluation Council Account.

The EFSEC Account is created in the state treasury. This is a non-appropriated account that is subject to allotment procedures. All payments, including fees, deposits, and reimbursements, received by the EFSEC from preapplicants, applicants, and certificate holders, must be deposited into this account, instead of to the State General Fund. Only the Chair or the Chair's designee may authorize expenditures from the EFSEC Account. Expenditures may be used to carry out EFSEC siting laws.

#### Stakeholder Consultation and Report on Rural Clean Energy and Resilience.

The Department of Commerce (Commerce) must conduct at least three stakeholder meetings, with at least one in Eastern Washington and at least one in Western Washington. These stakeholder meetings must be held with rural, agriculture, natural resource management and conservation, and forestry stakeholders to gain a better understanding of the benefits and impacts of anticipated changes in the state's energy system, including the siting of facilities under the jurisdiction of the EFSEC, and to identify risks and opportunities for rural communities.

Commerce must then complete a report on Rural Clean Energy and Resilience, which must consider the stakeholder consultation and must include recommendations for how to more equitably distribute costs and benefits to rural communities. The report must specifically examine the impacts of energy projects in rural areas to jobs, local tax revenue, agriculture, and tourism, and it must forecast what Washington's clean energy transition will require for energy projects in rural Washington. The report must also include relevant information from the existing least-conflict priority solar siting pilot project in the Columbia Basin. An interim report is due December 1, 2022, and a final report is due December 1, 2023, to the EFSEC, the Legislature, and the Joint Committee on Energy Supply, Energy Conservation,

and Energy Resilience.

Joint Committee on Energy Supply, Energy Conservation, and Energy Resilience.

The Joint Committee on Energy Supply and Energy Conservation is renamed the Joint Committee on Energy Supply, Energy Conservation, and Energy Resilience (Joint Committee). The Joint Committee must review: (1) inequities in where large alternative energy projects have been and are forecasted to be sited; (2) Commerce's report on Rural Clean Energy and Resilience; and (3) economic development assistance, mitigation payments, and viewshed impairment payments that counties not hosting their per capita share of alternative energy resources should provide to counties that host more than their per capita share.

The Joint Committee includes two members from each of the two largest caucuses of the Senate, two members from each of the two largest caucuses of the House of Representatives, and alternates from each caucus of each chamber.

The requirements for the Joint Committee include that the Joint Committee must hold at least four meetings before June 30, 2024, with at least two in Eastern Washington. There are two co-chairs from each caucus and one must preside over the Western Washington meetings while the other must preside over the Eastern Washington meetings. The first meeting must occur by September 30, 2022. The Joint Committee must report its findings and any recommendations to the EFSEC and the Legislature by December 1, 2023.

**Votes on Final Passage:**

House	95	3	
Senate	29	20	(Senate amended)
House	92	6	(House concurred)

**Effective:** June 30, 2022

**Partial Veto Summary:** The Governor vetoed the section that requires the Department of Commerce to conduct stakeholder meetings and then complete a report on rural clean energy and resilience, as well as the sections that change the name of and add new requirements to the Joint Committee on Energy Supply and Energy Conservation.